

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 1:11-cr-071

Also Case No. 1:15-cv-384

- vs -

District Judge Susan J. Dlott

Magistrate Judge Michael R. Merz

TERRANCE WHITE

Aka TERENCE WHITE,

Defendant.

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**ORDER ADOPTING IN PART REPORT AND RECOMMENDATIONS  
AND CONTINUING THE ORDER OF REFERENCE**

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This § 2255 case is before the Court on the Report and Recommendations (the “Report,” ECF No. 615) of United States Magistrate Judge Michael R. Merz to whom this case was referred (ECF No. 596).

The Report addresses only the Motion to Dismiss filed by the United States (ECF No. 605). Magistrate Judge Merz recommends that Motion be denied and “that the case continue to be referred to the Magistrate Judge for further proceedings.” *Id.* at PageID 1907. The United States has filed no objections to that recommendation and it is hereby ADOPTED. The Motion to Dismiss is therefore DENIED.

Defendant, who is represented by appointed counsel, has objected

to the recommendation that this case continue with the Magistrate Judge for further proceedings in order for “the United States to file a complete answer in the form required by Rule 5 of the § 2255 Rules,” and for White to “be afforded an opportunity to file a reply as contemplated by Rule 5(d).” (Id. at PageID 1906). The Government has already filed a complete answer to White’s various Grounds for Relief (Doc. No. 605), and White has already filed his reply thereto (Doc. No. 614). Thus, the Court – after adopting the Magistrate’s recommendation to deny the United States’ Motion to Dismiss – should rely upon the filings already submitted by the parties to determine whether there is a triable factual dispute on any of White’s Grounds for Relief, thereby entitling White to an evidentiary hearing in this matter.


(Objections, ECF No. 616, PageID 1908).

The Court has reviewed the findings and conclusions of the Magistrate Judge and has considered de novo all of the filings in this case with particular attention to the issues as to which Petitioner has lodged objections. Although the United States captioned its filing in response to the Order for Answer as a motion to dismiss and argued that all the Defendant’s Grounds for Relief were procedurally defaulted, it also wrote: “[h]owever, if this Court chooses to consider the case substantively as a claim for ineffective assistance of counsel, the government submits arguments for each individual claim, as set forth below.” (ECF No. 605, PageID 1821.) It then proceeded to provide an additional twenty pages of argument on the merits. Defendant’s response, captioned “Reply in Support of Motion under 28 U.S.C. § 2255,” was likewise comprehensive and included an argument for an evidentiary hearing (ECF No. 614).

Accordingly, the Court finds the Defendant’s Objection WELL TAKEN. The § 2255 Motion is therefore, pursuant to the original Order of Reference, REMANDED to the Magistrate Judge for further proceedings, including determining whether an evidentiary hearing is

warranted, conducting such a hearing if warranted, and rendering a report and recommendations on the merits.

December 11, 2015.



Susan J. Dlott  
United States District Judge